

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LUTHER WILLIAM BREWER,)	
)	
Petitioner,)	
)	
v.)	1:12CV768
)	1:02CR227-1
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On August 3, 2015, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner filed a Notice [Doc. #51], indicating that he concurs with the Magistrate Judge's Recommendation. No objections were filed within the time limits prescribed by Section 636.

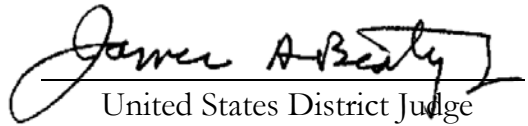
Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #49] is hereby adopted.

IT IS THEREFORE ORDERED that the Government's Motion to Dismiss [Doc. #35] is deemed WITHDRAWN.

IT IS FURTHER ORDERED that Petitioner's Motion under 28 U.S.C. § 2255 [Doc. #27] is GRANTED as to Petitioner's claim under United States v. Simmons, 649 F.3d 237 (4th Cir. 2011), and that Petitioner's sentence on Count Three is VACATED.

The Clerk is directed to set this matter for resentencing on Count Three in light of the Government's concession. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This, the 28th day of August, 2015.


United States District Judge